



**THE NEW YORK CITY DEPARTMENT OF EDUCATION**

**JOEL I. KLEIN, Chancellor**

OFFICE OF THE CHANCELLOR  
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June 7, 2004

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

02-6

Ref.: Appeal of Universal Service Administrator's  
Decision with respect to NYC Department of  
Education appeal of a decision of the Universal Service  
Administrator for FY 2002

Dear Ms. Dortch:

Attached are an original and four copies of an appeal by decisions of the Universal Service Administrator for FY 2002.

A receipt copy is also enclosed for our records. Please stamp it "received" and return it to us in the self-addressed stamped envelope.

Sincerely,

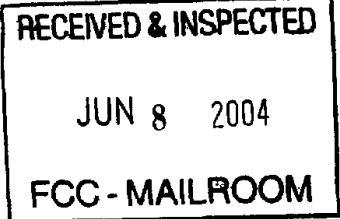
Ling Tan  
Director, Capital Budget & Financial Planning  
Office of the CFO  
New York City Department of Education

Attachments: USAC Appeal: original and copies

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554



In the matter of:	)	
	)	
Request for Review of Decisions	)	Docket Nos. 02-6
of the Universal Service Administrator	)	
	)	

Ref.: Applicant Names:	NYC Department of Education
Entity Numbers:	153135
Funding Year:	2002
Form 471 Application Numbers:	286071
Funding Request Numbers:	788540

In this appeal, the New York City Department of Education (NYCDOE) asks the Commission to review an appeal decision of the Schools and Libraries Division ("SLD" or "Administrator") that denies a request to correct an error, of undetermined cause, for FRN 788540 on the 2002 E-rate application. This appeal decision of the SLD failed to disclaim significant evidence that substantiates the NYCDOE contention and contradicts the program's guidance on this type of appeal.

*Background:*

The NYCDOE manages the largest public school system in the country. It has benefited significantly from the E-rate program and has made great strides in bringing Internet access to more than one million students in over 1200 schools.

Throughout the seven-year history of the E-rate program, the NYCDOE has worked long and hard to comply with application requirements for telecommunication discounts. These requirements and procedures are often unclear, contradictory, and sometimes in direct conflict with local rules and practices. Our expectations were that as the program matured the expanding body of E-rate rules and related guidance would be made clearer, the application process would be more efficient and reliable, and decisions on funding would be made in a timelier manner. Unfortunately these expectations, to a large extent, have not been realized. In fact, we have less confidence in the administration of the E-rate program and given the magnitude of the school district, are facing increasing challenges in complying than ever before.

NYCDOE has expressed, from the inception of the E-rate program, its concern that certain program rules and practices reveal a lack of understanding and sensitivity for the needs and capabilities of the large school district applicant. The SLD makes an incorrect assumption that whatever works for a ten school district will apply to a school system 120 times larger. While our input on such matters was never sought by the SLD, the NYCDOE has made efforts to point out problems and offer alternatives to problematic E-rate rules and practices.

As an example, the SLD has historically given application reviewers incentives that encourage them to review and approve small E-rate applications first leaving the large, more time consuming applications for last. This admitted practice results in the NYCDOE receiving its approval months after most other applicants each and every year. While, the NYCDOE's annual project plan is larger, and more complex than most, the district is given less time to complete its task. Also, the electronic application process was designed for the small applicant. Previously prepared data must be re-entered via an Internet connection to the SLD forcing the applicant to re-enter, under time constrictions, large amounts of data that was compiled and "proofed" over periods of months. The multiple data-entries required for one school data change portends errors that could easily impact the application. While this simplistic application process may work adequately for an applicant with few schools, it is an inefficient and a dangerously problematic way of doing business for a large school district such as New York City.

When the Schools and Libraries Division introduced the electronic format of the E-rate application several years ago, they encouraged the NYCDOE to abandon the written application format and use the new process. The SLD promised the benefits would be greater data accuracy and quicker funding approval. In the spirit of cooperation, NYCDOE staff visited the SLD in Washington DC to further discuss the matter.

The annual NYCDOE E-rate application is massive in both size and complexity. One recent application included more than 300 pages and some 19,000 data entries. Compiling the data and putting those details into the required application form takes months of work and requires weeks of review for accuracy. The NYCDOE initially rejected requests that it make its E-rate application electronically via the Internet. Examination of the on-line format of the application raised concerns of exposing the district to an increased possibility of data entry omissions and errors. Common "time-outs" in the system and the hours of re-entering data was a recipe for problems. The application process made no provisions for a clean transfer of prepared and reviewed data eliminating considerable possibilities of error. In spite of these concerns, the NYCDOE bowed to the requests of the SLD and agreed to file for the 2002 application on-line.

This appeal is a consequence of a failure in both the application process and the SLD's review of the matter.

### *Issues and Arguments:*

In the late summer of 2003, during the invoicing phase of the 2002 funding year, the SLD refused to reimburse the vendor for internal connections work in several schools associated with FRN 788540. After many weeks it became apparent that the SLD invoicing unit was working from a list of 76 schools associated with that FRN while the NYCDOE and its vendor referenced a list of 181 schools. Our investigation of the matter leads us to believe that a failure in the data entry stage of the on-line application process truncated the intended list of schools. For several months that followed, the NYCDOE submitted evidence that the school list associated with FRN 788540 included 181 schools and that the SLD was aware of this fact prior to approving the FRN for some \$46 million dollars.

The evidence submitted to the SLD included the following:

1. The NYCDOE filed its application electronically for the first time in 2002. During that period, concern was expressed that the size of the application might be problematic when filing on-line. Inputting the data took days and the data entry staff experienced frequent connection "time-outs."
2. The review of all worksheets referenced during the actual electronic filing in January 2002 indicates 181 schools, not 76. The 76 schools on the SLD list is a subset of the original 181 schools intended by the NYCDOE.
3. The NYCDOE financial spreadsheet that supports the discounts requested in FRN 788540 is based on planned telecommunications work in 181 schools. The SLD list of 76 schools for this FRN would require less than half of the 46 million dollars requested and approved. This financial spreadsheet is used by the NYCDOE to define the scope of work for the subset of 181 schools. The NYCDOE does not negotiate separate and distinct contracts for every subset of work under the state master contract. This evidence was submitted twice during our SLD appeal.
4. During the PIA review of the 2002 application, the NYCDOE was asked if work and equipment requested for schools included under FRN 788540 were also being requested under other discount bands in the application. The NYCDOE response to that inquiry included a list of 181 schools, which was discussed but never challenged by PIA staff. This evidence was submitted three separate times to the SLD during the appeal process.

While there is no absolute way to determine whether the intended data was lost due to a data entry or system error, it is clear that the discount request was intended for work in 181 and not 76 schools. Further, the evidence is clear that, prior to funding approval, the SLD was aware of the 181 assigned schools.

In November of 2003, NYCDOE staff visited SLD headquarters to discuss this serious discrepancy and was assured of a quick reply to our appeal. This outstanding problem was denying access to already approved funding

for 105 schools and Internet access for 80,000 students. Even if it is assumed that the applicant made the data entry error, SLD posted guidance on their website indicates their intent to approve such appeals.

*"If the applicant made a mistake in completing the Form 471 (for example, put in the wrong contract award date in Block 5) and had provided information to the SLD either with the application or during PIA review (for example, provided a copy of the contract to PIA during review with the award date indicated) and when the appeal points out the mistake (the wrong contract award date) and how the SLD could have seen the mistake (from the contract provided during review), the SLD will grant the appeal."*

Beyond the actual negative decision of the SLD, the appeal process that this school system was subjected to was troubling. Evidence was submitted and discussed with not fewer than five different SLD staff members. The same information had to be restated, explained, and paperwork resubmitted several times. Work in dozens of schools was stopped and the school system was being faced with the unexpected need to pay additional millions of dollars while approved funding remained unused. Our expressions of urgency on the matter went unheeded and no explanation for the months delay was given. While applicants are required to reply to requests for information in not more than 7 days, there is no such limit imposed on the SLD no matter how negatively the delay impacts the school system. In this instance, the months' long and unnecessary delay in the appeal process itself caused significant financial and programmatic harm to our schools.

The NYCDOE asks the FCC to reverse the decision of the SLD and recognize the full list of 181 schools associated with FRN 788540.

Respectfully submitted,



By: Ling Tan

Dated: June 2, 2004